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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* KARL PFLEGER and BRIAN LARSON

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Application No. 10/802,958  
Technology Center 2100

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Mailed: July 31, 2009

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Before QUITA GOULD *Supervisory Paralegal Specialist*  
GOULD, *Supervisory Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on June 3, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

APPEAL BRIEF: CLAIMS APPENDIX

A review of the Appeal Brief, filed October 3, 2007, reveals that claims 29, 33, 34, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 in the Claims Appendix of the Appeal Brief are not consistent with those in the last entered amendment, filed on April 23, 2007. The copy of the claims should be in proper format and should not include any markings such as brackets or underlining except for claims in a reissue application in accordance with 37 C.F.R. 41.37(c)(1)(viii). Furthermore, the Claims Appendix cannot assume entry of after-final submissions for which an Advisory Action (or other Office communication) has not advised of entry. *See also Manual of Patent Examining Procedure (MPEP) § 1205.02 (8<sup>th</sup> ed. Rev. 6, Sept. 2007)* for details.

Specifically, claim 29, as provided in the Appeal Brief's Claims Appendix, reads: "making the ranking of the popularity of the first document available for responding to a subsequent search query."

However, in the last entered amendment dated April 23, 2007, claim 29 reads: "making the rank of the popularity of the first document available for responding to a subsequent search query."

Claim 33, as provided in the Appeal Brief's Claims Appendix, reads: "wherein changing the ranking of the popularity of the first document comprises weighting the user interaction with the first document based on the breadth of the search query."

However, in the last entered amendment dated April 23, 2007, claim 33 reads: "wherein ranking the popularity of the first document comprises

weighting the user interaction with the first document based on the breadth of the search query.”

Claim 34, as provided in the Appeal Brief’s Claims Appendix, reads: “wherein changing the ranking of the popularity of the first document further comprises adding the weighted user interaction to a popularity database configured to store measures of a popularity of documents.”

However, in the last entered amendment dated April 23, 2007, claim 34 reads: “wherein ranking the popularity of the first document further comprises adding the weighted user interaction to a popularity database configured to store measures of a popularity of documents.”

Claim 38, as provided in the Appeal Brief’s Claims Appendix, reads: “further comprising responding to the subsequent search query based at least in part on the ranking of the popularity of the first document.”

However, in the last entered amendment dated April 23, 2007, claim 38 reads: “further comprising responding to a subsequent search query based at least in part on the rank of the popularity of the first document.”

Claim 39, as provided in the Appeal Brief’s Claims Appendix, reads: “a ranking of documents in the response to the subsequent search query based at least in part on the ranking of the popularity of the first document.”

However, in the last entered amendment dated April 23, 2007, claim 39 reads: “a ranking of documents in the response to the subsequent search query based at least in part on the rank of the popularity of the first document.”

Claim 41, as provided in the Appeal Brief's Claims Appendix, reads: "An article comprising one or more machine-readable media storing instructions configured to cause one or more machines to perform operations comprising . . ." and "making the ranking of the popularity of the first document available for responding to a subsequent search query."

However, in the last entered amendment dated April 23, 2007, claim 41 reads: "An article comprising one or more machine-readable media storing instructions operable to cause one or more machines to perform operations comprising . . ." and "making the rank of the popularity of the first document available for responding to a subsequent search query."

Claim 42, as provided in the Appeal Brief's Claims Appendix, reads: "The article of claim 0 . . ."

However, in the last entered amendment dated April 23, 2007, claim 42 reads: "The article of claim 41 . . ."

Claim 43, as provided in the Appeal Brief's Claims Appendix, reads: "The article of claim 0 . . ."

However, in the last entered amendment dated April 23, 2007, claim 43 reads: "The article of claim 41 . . ."

Claim 44, as provided in the Appeal Brief's Claims Appendix, reads: "The article of claim 0 . . ."

However, in the last entered amendment dated April 23, 2007, claim 44 reads: "The article of claim 41 . . ."

Claim 45, as provided in the Appeal Brief's Claims Appendix, reads:  
"The article of claim 0, wherein changing the ranking of the popularity of the first document comprises weighting the user interaction . . ."

However, in the last entered amendment dated April 23, 2007, claim 45 reads: "The article of claim 41, wherein ranking the popularity of the first document comprises weighting the user interaction . . ."

Claim 46, as provided in the Appeal Brief's Claims Appendix, reads:  
"wherein changing the ranking of the popularity of the first document further comprises adding the weighted user interaction . . ."

However, in the last entered amendment dated April 23, 2007, claim 46 reads: "wherein ranking the popularity of the first document further comprises adding the weighted user interaction . . ."

Claim 47, as provided in the Appeal Brief's Claims Appendix, reads:  
"The article of claim 0 . . ."

However, in the last entered amendment dated April 23, 2007, claim 47 reads: "The article of claim 41 . . ."

Claim 48, as provided in the Appeal Brief's Claims Appendix, reads:  
"The article of claim 0 . . ."

However, in the last entered amendment dated April 23, 2007, claim 48 reads: "The article of claim 41 . . ."

Claim 49, as provided in the Appeal Brief's Claims Appendix, reads:  
"The article of claim 0 . . ."

However, in the last entered amendment dated April 23, 2007, claim 49 reads: “The article of claim 41 . . .”

Claim 50, as provided in the Appeal Brief’s Claims Appendix, reads: “The article of claim 0, further comprising responding to the subsequent search query at least in part on the ranking of the popularity of the first document.”

However, in the last entered amendment dated April 23, 2007, claim 50 reads: “The article of claim 41, further comprising responding to the subsequent search query at least in part on the rank of the popularity of the first document.”

Claim 51, as provided in the Appeal Brief’s Claims Appendix, reads: “adjusting a ranking of documents in the response to the subsequent search query based at least in part on the ranking of the popularity of the first document.”

However, in the last entered amendment dated April 23, 2007, claim 51 reads: “adjusting a ranking of documents in the response to the subsequent search query based at least in part on the rank of the popularity of the first document.”

Appropriate correction of all claims provided in the Claims Appendix in proper format is required.

Accordingly, it is ORDERED that the application is returned to the Examiner:

(1) to hold the Appeal Brief, filed October 3, 2007, defective, as required by 37 C.F.R. § 41.37(d);

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(2) to instruct Appellants to submit a corrected Appeal Brief Claims Appendix for the Brief filed October 3, 2007;

(3) to acknowledge and consider any “paper” submitted by Appellants to correct the Appeal Brief; and

(4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

QG/bim

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